

ST 01-0004-PLR 02/14/2001 EXEMPT ORGANIZATIONS

This letter discusses the tax liabilities of a university dining facility that is open to the public and that allows students living in on-campus housing to utilize a computerized declining-balance card system to pay for meals at the dining facility. See 86 Ill. Adm. Code 130.2005(b)(4). (This is a PLR).

February 14, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter dated December 7, 2000 and your follow-up letter dated January 18, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to the ORGANIZATION for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither the ORGANIZATION nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter dated December 7, 2000, you have stated and made inquiry as follows:

Since its inception as NAME, and as the third campus of the ORGANIZATION¹, the ORGANIZATION has been exclusively an upper-division institution offering courses of instruction only to juniors, seniors, and graduate students. Pursuant to authorization granted by the Illinois Board of Higher Education, in the fall of 2001 ORGANIZATION will admit our first freshman class for the PROGRAM. In 2002 ORGANIZATION will have both freshman and sophomore classes in the Program.

The campus already has resident upper-level students living in apartment style campus housing with their own kitchens. However, the incoming freshmen for the Program will reside in more traditional dormitory-style housing, currently under construction, and will require meal plans. In order for ORGANIZATION to avoid building a multi-million dollar kitchen and dining facilities, the new residence hall will not have a closed cafeteria. We have decided to provide meals to the residents of this hall at our existing cafeteria in the Center under a meal plan. The existing cafeteria serves the faculty, staff and students, and also those members of the public who might be on campus for some purpose (such as attending a conference, continuing education program, or cultural event). Our new residence hall is located a short distance from this cafeteria in the Center.

ORGANIZATION issues a photographic identification card to each student. Through this photographic I.D. system each registered student has the ability to gain access to sporting events, to borrow books from the library, to gain access to the recreation center, to use the computer laboratories, and to use photocopy machines. Students who

will enter into our on-campus housing contract for room and board, which includes a meal plan, will also be able to purchase their meals through a computerized declining-balance card system using their photographic identification card. Students purchasing meals through the meal plan will present their photographic identification card to the cashier who will swipe the card through a cash register that scans the card and that reduces the student's meal plan account balance by the amount of each meal as it is purchased. This computerized declining-balance card system will provide auditable and verifiable records of food sales to such students.

We are requesting that the meals sold to residential students living in on-campus university housing who purchase their meals under the university meal plan through a computerized declining-balance card system that provides auditable and verifiable records of food sales to such students be exempt from Retailers' Occupation Tax. The proposed exemption would be limited to the sale of meals to students who reside in on-campus university housing and who have the declining-balance identification-card meal plan.

We believe our circumstances are identical to the situation at ORGANIZATION3 campus which you ruled on in your Private Letter Ruling dated May 12, 1995 (attached). We hope we will be granted a similar ruling. We expect to admit students to our new residence hall in August of 2001 and we respectfully request an expedited ruling if possible.

If you have any questions in regards to this request please do not hesitate to contact.

In PERSON'S letter dated January 18, 2001, which included the Request f, he stated and made inquiry as follows:

Thank you for your telephone call of January 17, 2001. I am writing to provide the information required under Sec. 120.110 (b), in the application process for a private letter ruling. This letter is intended to augment the original letter of December 7, 2000, filed by PERSON2, in which she requested a ruling that the meals sold to residential students living in on-campus university housing who purchase their meals under a university meal plan through a computerized declining-balance card system that provides auditable and verifiable records of food sales to such students be exempt from Retailers' Occupation Tax.

Sec. 120.110 (b)(1): A statement of all material facts is provided in the letter of December 7, 2000, in which the ruling was requested originally.

Sec. 120.110 (b)(2): There are no contracts, licenses, agreements, or instruments relevant to this request. Eventually there will be a contract with whatever vendor is selected to provide an electronic transaction processing system for operating the I-card, the debit card system that will be used to implement the student meal plan as described in the December 7th letter. The only document in existence at this time is the Proposal, a copy of which is enclosed. A student meal plan agreement to be signed by participating students will be drafted if a favorable ruling is received from the Department of Revenue on the sales tax issue; however, no such agreement yet exists and one cannot be drafted until we have the Department's ruling on the sales tax issue.

Sec. 120.110 (b)(3): There are no audits or litigation pending. This is a request for a ruling prior to initiating the student meal plan. The anticipated beginning date of the meal plan is August 2001.

Sec. 120.110 (b)(4): To the best of the knowledge and belief of the taxpayer and the taxpayer's representatives the Department has not previously ruled on the same or similar issue for the taxpayer and neither the taxpayer nor any representatives has previously submitted the same or similar issue and withdrew it.

Sec. 120.110 (b)(5): Illinois Department of Revenue Regulations, Title 86, Part 130, Section 130.205 has provisions related to the sale of food to students by educational institutions which exempt student meal plans from sales tax. We believe that the proposed student meal plan fits within the intent of these regulations. Further, in a Private Letter Ruling dated May 12, 1995, issued to ORGANIZAITON, the Department granted a favorable ruling on a set of facts which are identical to those presented in this request. A copy of that Private Letter Ruling was submitted with the original December 7, 2000 request.

Sec. 120.110 (b)(6): Taxpayer is unaware of any authority contrary to the ruling requested.

Sec. 120.110 (b)(7): No trade secret information is involved in this request for a ruling.

Sec. 120.110 (b)(8): The original request for the ruling was signed by PERSON2, who has within jurisdiction and authority the administration of student housing and student meal plans; therefore she is the appropriate and authorized institutional representative to seek a ruling on the question presented. This submission was prepared PERSON, who is authorized to represent the institution in legal and administrative proceedings.

If you require any further information or have any questions, do not hesitate to contact me. As I have now entered an appearance as counsel, please address future correspondence to me rather than to PERSON2.

A school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. In any instance in which the dining facility is opened up for the use of other persons, all sales that are made at such facility while that condition continues to prevail are taxable. See 86 Ill. Adm. Code 130.2005(b)(4). In a college campus setting, this has meant that sales of meals in a closed dormitory cafeteria were exempt but all food sales in a student union type setting, including sales to students, were taxable. The regulatory provisions and the closed cafeteria concept have been in effect for many years and two purposes are served. The first purpose served by the closed cafeteria concept is to solve the practical impossibility that the Department would face when auditing an open facility in verifying that all of the sales claimed to be exempt were, in fact, made to students. The second purpose served by the closed cafeteria concept is the protection of retailers in competition with the school's open facility. That is, student union (open to the public) type selling competes with area food service establishments for student purchases as well as for purchases by the public.

While the food service facilities that you have described are not closed to the public, both purposes of the regulation may be served by the system you have described so long as exempt sales

are limited to students who reside in on-campus university housing who have purchased a meal plan. University dining facilities that are open to the public and that provide meals included in a meal plan to students who live in on-campus university housing serve the same school function as a cafeteria that is part of a residence hall serving only the student residents of that hall. As such, food sales made by the University at the cafeteria in the Center to students who have entered into on-campus housing contracts and who have purchased meal plans are exempt from Retailers' Occupation Tax if such sales are made through a computerized declining-balance card system. However, this is true only so long as the school clearly identifies and documents, at the point of sale, the nontaxable sales to students who have entered into on-campus housing contracts and who have purchased meal plans. Sales made by the University at these dining facilities to the public, faculty, staff, and students who reside off-campus or in non-university housing are subject to Retailers' Occupation Tax.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. . If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at www.revenue.state.il.us or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.